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## BUDGET UNIT BRIEF – FY 2019

Fiscal Services Division

October 8, 2018



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Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

## Indigent Defense Fund

### Purpose and History

The United States and Iowa Constitutions require an indigent criminal justice defendant or indigent juvenile to be provided with legal counsel at no initial cost to the client. Iowa has two methods to provide legal counsel to indigent criminal justice clients and juveniles: public defenders and private attorneys. A judge determines if a person is indigent, based on statute, and appoints a public defender. If a public defender is unable to take a case, the judge appoints a private attorney. Costs of legal assistance are assessed against the indigent defendant or other indigent party as a component of court costs per Iowa Code section 815.9(3). The costs of legal assistance are assessed only to the extent of the indigent person's reasonable ability to pay.

In Iowa, before July 1, 1987, indigent legal counsel costs were paid by the counties, and local public defenders were county employees. The General Assembly transferred indigent legal counsel expenses to the State beginning in FY 1988, as the last major component of court reorganization. Court reorganization transferred the majority of expenses for the Judicial Branch from counties to the State General Fund, for the purpose of property tax relief, from FY 1983 to FY 1988.

Counties still maintain a "base" of expenses for juvenile proceedings. The statewide base is approximately \$1.6 million, as determined by Iowa Code section 232.141. The State assumes all costs for indigent juvenile cases once the county base expenditure is reached.

The General Assembly appropriated funds to the Judicial Branch in FY 1988 for the costs of indigent defense. The General Assembly transferred the program to the State Public Defender's Office in FY 1989. The General Assembly has made certain changes to the process since FY 1989 for the purpose of cost containment.

### Private Attorneys

Cases not handled by the Office of the State Public Defender are referred to private attorneys. Claims submitted by these attorneys are paid by a State General Fund appropriation to the Indigent Defense Fund. The State Public Defender started the contract attorney program to handle criminal cases for a set hourly fee in FY 1993. Most contract attorneys are paid on an hourly basis. However, the State Public Defender is increasing the use of special contracts that provide for payment of attorney services based on a fixed fee for representation in a specified number of cases, or some other basis for attorney compensation rather than an hourly basis. Contract attorneys provide representation in most cases, but if no contract attorney is available, representation may be provided by other attorneys appointed by the court.

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### More Information

Office of the State Public Defender: [spd.iowa.gov](http://spd.iowa.gov)

LSA Staff Contact: Laura Book (515.725.0509) [laura.book@legis.iowa.gov](mailto:laura.book@legis.iowa.gov)

The Office also contracts with the Department of Corrections (DOC) to represent indigent people held at the Iowa Medical Classification Center at Oakdale during involuntary civil commitment proceedings for hospitalization due to mental health issues.

### **Funding**

The State General Fund appropriations total approximately \$59.6 million, split between the Office of the State Public Defender (43.9%) and the Indigent Defense Fund (56.1%). The county base funding is added into the Indigent Defense Fund budget. The Indigent Defense Fund pays private attorneys for representing indigent defendants or indigent parties. The Fund also pays for expert witnesses, court reporters of depositions, private investigators, and other service providers for the benefit of indigent defendants or indigent parties.

### **Related Statutes and Administrative Rules**

Iowa Code chapters [13B](#) and [815](#)

Iowa Administrative Code [493](#)

### **Budget Unit Number**

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